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June 9, 2000

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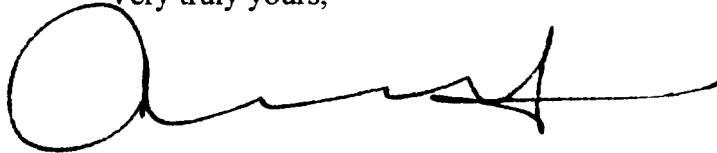
Re: MM Docket No. 00-10
MM Docket No. 99-292
RM-9260
Establishment of a Class A Television Service
Saga Broadcasting Corp.

Dear Ms. Salas:

Transmitted herewith, on behalf of Saga Broadcasting Corp. ("SBC"), licensee of low power television station KUNU-LP, Channel 21, Victoria, Texas, is an original and four copies of a Petition for Reconsideration filed in the above-referenced rule making proceeding.

If there are any questions with respect to this matter, please communicate with the undersigned.

Very truly yours,



Gary S. Smithwick
Counsel for
SAGA BROADCASTING CORP.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
 WASHINGTON, D.C.

JUN - 9 2000

In the Matter of

**ESTABLISHMENT OF A CLASS A
 TELEVISION SERVICE**

)
)
) MM Docket No. 00-10
) MM Docket No. 99-292
) RM-9260
)
)

To: The Commission

PETITION FOR RECONSIDERATION

Saga Broadcasting Corp. ("Saga"), by counsel, pursuant to 47 CFR §1.106 respectfully submits its *Petition for Reconsideration* in connection with the Commission's decision in Establishment of a Class A Television Service, Report and Order, 15 FCC Rcd 6355 (2000) ("*Report & Order*").¹ In support thereof, the following is stated:

I. INTRODUCTION

A. Saga's Spanish-Language Television Station at Victoria, Texas

1. Saga is licensee of low power television ("LPTV") station KUNU-LP, operating on Channel 21 at Victoria, Texas. On January 28, 2000, pursuant to the Community Broadcasters Protection Act of 1999,² Saga filed with the Commission its Statement of Eligibility for Class A Low Power Television Status ("Statement of Eligibility") requesting that KUNU-LP be issued a certificate of eligibility as a Class A

¹ 65 Fed. Reg. 91, 29985-30012, published May 10, 2000. This petition is timely filed within 30 days of the publication of the *Report & Order* in the Federal Register.

² Community Broadcasters Protection Act of 1999, Section 5008 of Pub. L. No. 106-113, 113 Stat. 1501 (1999), codified as 47 U.S.C. § 336(f) (herein "CBPA").

Low Power Television Station.³ In the Statement, Saga provided its reasons why a Commission determination that issuance of a Certificate of Eligibility would serve the public interest, convenience and necessity.

2. Although KUNU-LP was not able to automatically qualify as an eligible Class A LPTV station by virtue of its operation during the 90-day period ending November 28, 1999, KUNU-LP is, nevertheless, deserving of a determination that issuance of a certificate of eligibility to KUNU-LP would serve the public interest, convenience and necessity. But for KUNU-LP's not having originated an average of 3 hours per week of local programming during the 90-day eligibility period, KUNU-LP would qualify.

3. By *Public Notice*, DA 00-1227, released June 9, 2000, the Commission dismissed Saga's Statement because Saga had not certified full compliance with the statutory provisions of the CBPA but requested the Commission to treat it as eligible for Class A status because of the nature of the program service provided or intended to be broadcast by KUNU-LP. In dismissing Saga's Statement, the Commission, in pertinent part, stated, "While the legislation affords the Commission discretion not to strictly apply the programming and operational standards, the Commission has determined in the Class A television service rulemaking proceeding in MM Docket No. 00-10...*Report and Order*, 15 FCC Rcd 6355, 6369 (2000)...[not to] consider the type of LPTV station's program service in determining Class A eligibility..."

4. Saga acquired KUNU-LP April 1, 1999, as an unbuilt permit. It was constructed July 24, 1999, and initiated program tests. KUNU-LP operates 100% in the

³ See *Public Notice*, Report No. 97659, released February 8, 2000, which acknowledged receipt of Saga's Statement for KUNU-LP.

Spanish-Language carrying the programs of Univision. A large percentage of the population of the Victoria, Texas, area, speaks Spanish as a first language, and KUNU-LP provides a valuable service to these viewers. KUNU-LP operates 24 hours a day in the Spanish-Language, broadcasting locally produced public service announcements and all commercial announcements in Spanish. KUNU-LP is currently recruiting Spanish-speaking reporters to broadcast local news segments twice daily in addition to the existing Univision national news programs. KUNU-LP is also involved in public service projects to increase awareness of health and education issues in the Spanish-speaking community, and works with local churches to provide religious services in Spanish.

B. Saga's Comments

5. On January 13, 2000, the Commission adopted an *Order and Notice of Proposed Rule Making*, 15 FCC Rcd 1173 (2000) ("*Notice*"). In the *Notice* the Commission sought comment on a wide range of issues related to the implementation of the CBPA, including the issue of whether to allow an alternative set of criteria for certain types of LPTV stations, such as foreign language stations that cannot meet the strict eligibility criteria.⁴ In inviting such comments, the Commission recognized that Section (f)(2)(B) of the CBPA permits the Commission to establish alternative eligibility criteria for Class A designation if:

...the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission.⁵

⁴ *Notice*, ¶ 21.

⁵ 47 U.S.C. §336(f)(2)(B).

6. In its comments, Saga reasserted the arguments made in its Statement of Eligibility that it should be granted eligibility for Class A status by virtue of the unique range of services provided by KUNU-LP to the local community of Victoria, Texas.

C. The Report & Order

7. In the *Report & Order*, the Commission rejected the proffers made by several groups in favor of foreign language programming:

We conclude, however, that foreign language stations should have the same eligibility requirements as any other potential Class A station.

Report & Order, ¶34 (footnote omitted). Saga respectfully submits that the compelling public interest in providing foreign language programming to local communities requires reconsideration of this aspect of the *Report & Order*.

II. ARGUMENT

A. The Importance of Spanish-Language Programming to Local Communities

8. The CBPA provides the statutory discretion necessary for the Commission to make flexible decisions to ensure that local communities receive the highest quality programming. Thus, Section (f)(2)(B) of the CBPA granted the Commission authority to establish alternative eligibility criteria for Class A designation in those cases where the public interest would be advanced. This is in accord with the primary purpose of the CBPA to establish certainty with respect to the future of community oriented LPTV stations, such as KUNU-LP that provide valuable foreign language programming.

9. Both the Congress⁶ and the Commission have recognized the importance of foreign language programming to local communities:

⁶ H.R. Conf. Rep. No. 106-464, at 150 (1999) (Joint Explanatory Statement).

In many cases, LPTV stations may be the only television station in an area providing local news, weather, and public affairs programming. Even in some well-served markets, LPTV stations may provide the only local service to residents of discrete geographical communities within those markets. Many LPTV stations air “niche” programming, often locally produced, to residents of specific ethnic, racial, and interest communities within the larger area, including programming in foreign languages.

Notice, ¶ 3. In the present case, KUNU-LP provides Spanish-language television in a community that largely speaks Spanish as a first language. It performs a wide range of services for the Spanish speaking community including on-air public service announcements, commercials aimed at the Spanish speaking community and the hiring of Spanish speaking personnel at the station. These services are just as important and valuable to the local community of Victoria, Texas, as any “locally” originated programming.

10. In the case of this specialized programming, it is the foreign language nature of the programming that is of primary importance, not where the programs are actually physically produced. Foreign language programming can often be produced much more efficiently from a source outside the local market. The Univision programming provided on KUNU-LP gives the local Spanish speaking community television access to important national news and entertainment. There is no reasoned basis to distinguish the services provided by KUNU-LP to the local community from programming that originates in the local market in terms of eligibility for Class A status.

11. In sum, providers of foreign language programming cannot be shown to have served their local communities any less than those LPTV stations producing their own programming. By expanding Class A eligibility to encompass these broadcasters the

Commission will be helping to fulfill the intent of the CBPA to stabilize the future of these unique and important television stations.

B. Saga's Proposal Would Appropriately Expand the Eligibility Criteria

12. Saga's proposal, as urged in its Comments, would not expand eligibility in a way that would render the criteria impractical or unmanageable. The Commission would only permit stations that fall short of one or more of the criteria set forth in the CBPA to qualify as Class A stations if they (1) provide a television service unique to the market, such as foreign-language programs; and (2) commit to satisfy the criteria within a short time (perhaps, within a year) of November 28, 1999. The latter requirement provides relief to LPTV operators who were otherwise diligently serving the local community, but may have been caught unaware and unfairly surprised by the narrowness of the eligibility criteria. In the present case, the FCC should not penalize Saga's Spanish-language television station in Victoria simply because Saga did not have sufficient time to initiate the programs that would have *ipso facto* qualified KUNU-LP to be a Class A Television Station.

13. It is clearly in the public interest to authorize stations, like KUNU-LP, as Class A Stations since they provide tangible public interest benefits. It is Saga's position that a commitment to provide foreign-language programming to a market where there is a significant population of persons for whom that language is a first language without more should qualify the station as a Class A station. However, if the FCC should adopt more restrictive criteria, it should apply the statutory criteria (minimum 18-hours daily operation, weekly 3-hours local programming, and compliance with the FCC's television rules) to those stations that commit to comply with them in the future.

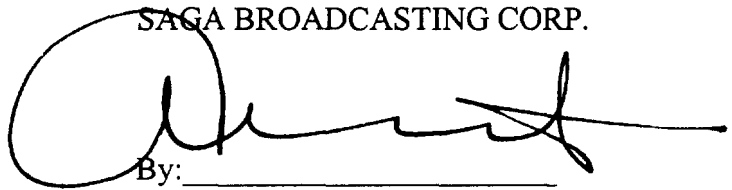
III. CONCLUSION

14. Saga has demonstrated a firm commitment to serving the Spanish speaking community of Victoria, Texas. Its foreign language programming has provided benefits to the local community that are clearly the equal of programming that may have been physically produced in the city of Victoria itself. Saga's proposal would not open the floodgates by expanding the eligibility criteria, but would only target stations that can demonstrate unique service to the local community. Therefore, Saga respectfully requests that the Commission reconsider its decision in the *Report & Order* and allow stations such as KUNU-LP to apply for Class A status.

WHEREFORE, Saga Broadcasting Corp. respectfully requests that the Commission grant reconsideration as requested herein.

Respectfully Submitted,

SAGA BROADCASTING CORP.

A handwritten signature in black ink, appearing to read 'Gary S. Smithwick', written over a horizontal line.

By: _____

Gary S. Smithwick
Its Attorney

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June 9, 2000